

THIRTIETH DAY - FEBRUARY 17, 2005**LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE
FIRST SESSION****THIRTIETH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, February 17, 2005

PRAYER

The prayer was offered by Pastor Carl Lilienkamp, Grace Lutheran Church, Wayne.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Schrock who was excused; and Senator Foley who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-ninth day was approved.

**STANDING COMMITTEE REPORT
Natural Resources**

The Natural Resources Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Jerrold Burke - Game and Parks Commission

VOTE: Aye: Senators Hudkins, Kopplin, Kremer, Loudon, McDonald, Schrock, Smith, Stuhr. Nay: None. Absent: None.

(Signed) Ed Schrock, Chairperson

**NOTICE OF COMMITTEE HEARING
Appropriations
Room 1524**

Tuesday, March 1, 2005

1:30 p.m.

AGENCY 20 - Department of Health and Human Services Regulation and

Licensure

AGENCY 25 - Department of Health and Human Services

AGENCY 26 - Department of Health and Human Services Finance and Support

LB 208	Tuesday, March 1, 2005	1:30 p.m.
LB 267	Tuesday, March 1, 2005	1:30 p.m.
LB 376	Tuesday, March 1, 2005	1:30 p.m.
LB 511	Tuesday, March 1, 2005	1:30 p.m.
LB 521	Tuesday, March 1, 2005	1:30 p.m.

(Signed) Don Pederson, Chairperson

RESOLUTION**LEGISLATIVE RESOLUTION 44.** Introduced by Kremer, 34.

WHEREAS, Jamie Harper, an esteemed resident of Grand Island and a student at Northwest High School, has achieved national recognition for exemplary volunteer service by receiving a 2005 Prudential Spirit of Community Award; and

WHEREAS, this prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Ms. Harper earned this award by giving generously of her time and energy, creating an educational game, conducting workshops, and developing a web site to educate others about the importance of protecting water resources; and

WHEREAS, the success of the State of Nebraska, the strength of our communities, and the overall vitality of American society depend, in great measure, upon the dedication of young people like Ms. Harper who use their considerable talents and resources to serve others.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates and honors Jamie Harper as a recipient of a Prudential Spirit of Community Award, recognizes her outstanding record of volunteer service, peer leadership and community spirit, and extends best wishes for her continued success and happiness.

2. That a copy of this resolution be sent to Jamie Harper.

Laid over.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of February 16, 2005, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Abboud, Chris, Public Affairs Group
Interop-Solutions LLC

Bromm, Jaron, of Fennemore Craig
Lincoln Federal Savings Bank

Kelley, Michael of Kelley & Lehan, PC
Cornerstone Energy, Inc.
Scheels All Sports Inc.

Schlitt, Marjorie
Nebraska Voting Rights Coalition

Skovgard, Gus
MidAmerican Energy Company

Vickers, Tom
Postsecondary Career Schools, Nebraska Council of Private

REPORTS

The following reports were received by the Legislature:

Energy Office

Annual Report for Fiscal Year 2003-2004
Nebraska Energy Statistics

Roads, Department of

Board of Public Roads Classifications and Standards Minutes for
November, 2004

SELECT FILE

LEGISLATIVE BILL 1. Advanced to E & R for engrossment.
LEGISLATIVE BILL 2. Advanced to E & R for engrossment.
LEGISLATIVE BILL 3. Advanced to E & R for engrossment.
LEGISLATIVE BILL 80. Advanced to E & R for engrossment.
LEGISLATIVE BILL 83. Advanced to E & R for engrossment.
LEGISLATIVE BILL 59. Advanced to E & R for engrossment.
LEGISLATIVE BILL 88. Advanced to E & R for engrossment.
LEGISLATIVE BILL 33. Advanced to E & R for engrossment.
LEGISLATIVE BILL 261. Advanced to E & R for engrossment.

LEGISLATIVE BILL 169. E & R amendment, AM7003, found on page 433, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 52. E & R amendment, AM7007, found on page 433, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 61. Advanced to E & R for engrossment.

LEGISLATIVE BILL 16. Advanced to E & R for engrossment.

LEGISLATIVE BILL 17. Advanced to E & R for engrossment.

LEGISLATIVE BILL 15. E & R amendment, AM7010, found on page 470, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 18. Advanced to E & R for engrossment.

LEGISLATIVE BILL 329. Advanced to E & R for engrossment.

LEGISLATIVE BILL 383. Advanced to E & R for engrossment.

LEGISLATIVE BILL 216. E & R amendment, AM7015, found on page 475, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 334. E & R amendment, AM7013, found on page 475, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 37. E & R amendment, AM7014, found on page 476, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 11. Advanced to E & R for engrossment.

LEGISLATIVE BILL 53. Senator Smith requested a machine vote on the advancement of the bill.

Advanced to E & R for engrossment with 32 ayes, 6 nays, 9 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 20. E & R amendment, AM7000, found on page 395, was adopted.

Senator Chambers withdrew his pending amendment, AM0117, found on

page 381.

Senator Chambers renewed his pending amendment, AM0191, found on page 410.

The Chambers amendment was adopted with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 118. E & R amendment, AM7001, found on page 398, was adopted.

Senator Cunningham renewed his pending amendment, AM0317, found on page 510.

The Cunningham amendment was adopted with 33 ayes, 0 nays, 13 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 119. E & R amendment, AM7006, found on page 431, was adopted.

Senators Mines and Beutler renewed their pending amendment, AM0398, found on page 537.

The Mines-Beutler amendment was adopted with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 21. E & R amendment, AM7002, found on page 432, was adopted.

Senator Erdman renewed his pending amendment, AM0082, found on page 402.

The Erdman amendment was adopted with 31 ayes, 0 nays, 16 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 89. Senator Chambers withdrew his pending amendment, FA14, found on page 457.

Senator Byars renewed his pending amendment, AM0447, found on page 541.

The Byars amendment was adopted with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 175. E & R amendment, AM7004, found on page 433, was adopted.

Senator Jensen renewed his pending amendment, AM0227, found on page 526.

The Jensen amendment was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 176. Senator Jensen renewed his pending amendment, AM0341, found on page 526.

The Jensen amendment was adopted with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 301. E & R amendment, AM7008, found on page 433, was adopted.

Senator Jensen renewed his pending amendment, AM0441, found on page 539.

The Jensen amendment was adopted with 32 ayes, 0 nays, 15 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 96. E & R amendment, AM7005, found on page 434, was adopted.

Senator Chambers renewed his pending amendment, AM0434, found on page 522.

Senator Chambers moved for a call of the house. The motion prevailed with 16 ayes, 0 nays, and 33 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Schimek

Voting in the negative, 26:

Bourne	Engel	Hudkins	Pedersen, Dw.	Thompson
Burling	Erdman	Janssen	Price	Wehrbein
Combs	Flood	Kremer	Redfield	
Connealy	Foley	Landis	Smith	
Cornett	Friend	Langemeier	Stuhr	
Cunningham	Howard	Mines	Synowiecki	

Present and not voting, 20:

Aguilar	Byars	Heidemann	Kruse	Pederson, D.
Baker	Chambers	Jensen	Louden	Preister
Beutler	Cudaback	Johnson	McDonald	Raikes
Brown	Fischer	Kopplin	Pahls	Stuthman

Excused and not voting, 2:

Brashear	Schrock
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The Chambers amendment lost with 1 aye, 26 nays, 20 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
Reconsider the vote on AM0434.

Senator Chambers moved for a call of the house. The motion prevailed with 14 ayes, 0 nays, and 35 not voting.

Senator Chambers requested a roll call vote on his motion to reconsider.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 26:

Bourne	Flood	Kopplin	Price	Thompson
Burling	Foley	Kremer	Redfield	Wehrbein
Byars	Friend	Landis	Schimek	
Connealy	Howard	Langemeier	Smith	
Cunningham	Janssen	Mines	Stuhr	
Erdman	Johnson	Pedersen, Dw.	Synowiecki	

Present and not voting, 12:

Beutler	Cudaback	Jensen	McDonald
Brown	Fischer	Kruse	Pahls
Cornett	Heidemann	Louden	Preister

Excused and not voting, 10:

Aguilar	Brashear	Engel	Pederson, D.	Schrock
Baker	Combs	Hudkins	Raikes	Stuthman

The Chambers motion to reconsider failed with 1 aye, 26 nays, 12 present and not voting, and 10 excused and not voting.

The Chair declared the call raised.

Pending.

GENERAL FILE

LEGISLATIVE BILL 242. Title read. Considered.

SENATOR KREMER PRESIDING

The Standing Committee amendment, AM0153, found on page 399, was adopted with 26 ayes, 0 nays, 15 present and not voting, and 8 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 13 present and not voting, and 7 excused and not voting.

SENATOR CUDABACK PRESIDING

NOTICE OF COMMITTEE HEARING

Health and Human Services

Room 1510

Thursday, February 24, 2005

1:30 p.m.

Shawn J. Baumgartner - Board of Emergency Medical Services
 Robert Dunn - Board of Emergency Medical Services
 Rommie J. Hughes - Board of Emergency Medical Services
 Benjamin B. Lans - Board of Emergency Medical Services
 Clinton Rasmussen - Board of Emergency Medical Services
 Kevin Benesch - Child Abuse Prevention Fund Board
 Peter Tulipana - Child Abuse Prevention Fund Board
 James E. Gordon - Foster Care Review Board
 John Seyfarth - Foster Care Review Board
 Gerald Schenck - Foster Care Review Board
 William Brush - Rural Health Advisory Commission
 Martin L. Fattig - Rural Health Advisory Commission
 Pamela H. List - Rural Health Advisory Commission

Michele Mulligan-Witt - Rural Health Advisory Commission
Samuel Augustine - State Board of Health
Edward Discoe - State Board of Health
Linda Lazure - State Board of Health
Paul Salansky - State Board of Health
James C. Schiefen - State Board of Health
Michael L. Westcott - Board of Emergency Medical Services
Gary Westerman - State Board of Health

(Signed) Jim Jensen, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 45. Introduced by Brashear, 4.

WHEREAS, the NEBRASKAland Foundation on Saturday, March 5, 2005, at the annual Statehood Day dinner, held in the Nebraska State Capitol, presents the distinguished Nebraskalander award, along with the Wagonmaster, Trailblazer, and Pioneer awards; and

WHEREAS, the Wagonmaster Award is presented to Mr. Ralph Holzfaster. Mr. Holzfaster operates his family farm. Other business interests of Mr. Holzfaster include a successful commercial hunting business, an irrigation dealership, and a motel/convenience store. Some boards Mr. Holzfaster presently serves on include the Nebraska Public Power District, Mid Plains College Foundation, Natural Fibers Corporation, and Western Nebraska Development Foundation. He also has been a member of the Nebraska Ethanol Authority, the Governor's Water Conference Council, and the Governor's Advisory Committee. He has received the Nebraska Agribusiness Public Service Award, University of Nebraska Alumni Association College of Business Business Leadership Award, and West Central Nebraska Development Outstanding Citizen Award; and

WHEREAS, the Pioneer Award is presented to Ms. Nancy Hoch. Ms. Hoch's primary interest for many years has been to improve the quality of life and economic vitality of Nebraska City. The following are some examples of her dedication to Nebraska: She worked for several years with Cargill Corporation to establish a "cooked meat" plant when the local plant was about to close, thus saving all the jobs; she recruited Arnie's Bagels and has been instrumental in the expansion and continuation of the American Meter Company; Ms. Hoch was primarily responsible for the location of the VF Factory Outlet Mall in Nebraska City; she led the long and determined process to transform Nebraska Highway 2 into a four-lane expressway between Lincoln and Nebraska City; and she is also well known for serving twelve years as a University of Nebraska Regent; and

WHEREAS, the Trailblazer Award is presented to Mr. Bryce Neidig. Bryce Neidig started farming in 1954 after completing a tour of duty with the United States Army in Korea. In 1966, he received outstanding young farmer awards from two different organizations. Mr. Neidig has gone on to serve agriculture in a variety of ways, including serving as president of the Madison County Farm Bureau and serving on the Nebraska Farm Bureau

Board of Directors beginning in 1975. He was elected president of the board in 1981. He continued to serve in that capacity until he retired in 2002. In 1988, he was elected to the American Farm Bureau Board of Directors and continued to serve on that board until his retirement. He currently serves on the Governor's Agricultural Advisory Council, the State Capitol Commission, the State Historical Society Foundation, and the Blue Cross and Blue Shield Board of Directors; and

WHEREAS, the distinguished NEBRASKAlander Award is presented to Father Val J. Peter. Father Peter is the Executive Director of Girls and Boys Town, the original Father Flanagan's Boys' Home. Father Peter assumed the position in 1985 and is the caretaker of Father Flanagan's dream of changing the way America cares for its children and families. He has led the growth of Girls and Boys Town from the Village of Boys Town, Nebraska, to nineteen sites in fourteen states and the District of Columbia. More than four hundred fifty thousand children and parents were directly assisted through the National Crisis Hotline this past year and nearly one million were helped indirectly through Outreach and Training Programs.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature extends its appreciation to the aforesaid honorees for their service to the State of Nebraska.

2. That a copy of this resolution be given to all honorees.

Laid over.

AMENDMENTS - Print in Journal

Senator Kremer filed the following amendment to LB 51:
AM0477

- 1 1. On page 3, strike beginning with "Such" in line 8
- 2 through "Agriculture" in line 10 and insert "Such laboratory
- 3 testing services shall not be expanded beyond the scope of the
- 4 department's statutory authority.".

Senator Raikes filed the following amendment to LB 283:
AM0473

(Amendments to E & R amendments, AM7011)

- 1 1. On page 8, lines 1 through 3, strike the new
- 2 language; and in line 3 after the period insert "In counties that
- 3 have adopted a resolution to extend the deadline for hearing
- 4 protests under section 77-1502, the deadline of July 25 shall be
- 5 extended to August 10.".

Senator Johnson filed the following amendment to LB 668:
AM0445

- 1 1. Strike beginning on page 2, line 7, through page 4,
- 2 line 8, and insert:

3 "A tract of land being part of Government Lot 1, part of
4 Government Lot 2, part of Government Lot 3, part of Government Lot
5 4, part of the South half of the Northwest Quarter, part of the
6 Northwest Quarter of the Southwest Quarter, part of the South half
7 of the Northeast Quarter and part of the North half of the
8 Southeast Quarter of Section 4, Township 8 North, Range 16 West of
9 the 6th P.M., Buffalo County, Nebraska, all more particularly
10 described as follows: Referring to the Southeast Corner of the
11 Northeast Quarter of said Section 4 and assuming the South line of
12 said Northeast Quarter as bearing N 89° 59' 10" W and all bearings
13 contained herein are relative thereto; thence N 89° 59' 10" W and
14 on the South line of the Northeast Quarter of said section a
15 distance of 660.0 feet to the ACTUAL PLACE OF BEGINNING; thence S
16 01° 37' 34" W a distance of 18.65 feet to a point on the North
17 property line of an existing road; thence N 89° 29' 57" W and on
18 the aforesaid North property line a distance of 3372.3 feet to the
19 point of curvature; thence on a 1332.72 foot radius curve to the
20 left forming a central angle of 13° 10' a distance of 306.26 feet
21 to the point of tangency; thence tangent S 77° 20' 03" W a distance
22 of 224.85 feet to the point of curvature; thence on a 687.31 foot
23 radius curve to the right forming a central angle of 07° 31' 16" a
24 distance of 90.32 feet; thence leaving said curve N 01° 39' E a
1 distance of 85.39 feet to a point on the South line of the
2 Northwest Quarter of said Section 4; thence N 01° 31' 22" E a
3 distance of 310.2 feet to the Northeast corner of a tract of land
4 known as Reservation No. 2 as located in State Application Resurvey
5 No. 154 and filed in the Buffalo County Surveyors Office; thence N
6 89° 57' 11" W and on the North line of said Reservation No. 2 tract
7 a distance of 243.86 feet; thence N 01° 43' 30" W a distance of
8 1501.2 feet; thence S 85° 38' E a distance of 681.66 feet to the
9 Southeast corner of a tract of land known as Reservation No. 1,
10 thence N 21° 02' W and on the easterly line of said Reservation No.
11 1 a distance of 535.07 feet; thence S 80° 22' 31" E a distance of
12 365.02 feet; thence S 86° 03' 12" E a distance of 351.11 feet;
13 thence N 86° 44' 38" E a distance of 359.33 feet; thence N 79° 19'
14 21" E a distance of 443.41 feet; thence N 77° 14' 05" E a distance
15 of 660.05 feet; thence N 83° 05' E a distance of 195.54 feet;
16 thence N 89° 51' 32" E a distance of 1503.54 feet to a point, said
17 point being 660.0 feet West of the East line of said Section 4;
18 thence S 01° 37' 34" W a distance of 2450.53 feet to the place of
19 beginning. Containing 221.3 acres, more or less.

20 A tract of land being part of the North half of the South
21 half of Section 4, Township 8 North, Range 16 West of the 6th P.M.,
22 Buffalo County, Nebraska, more particularly described as follows:
23 Referring to the Northeast corner of the Southeast Quarter of
24 Section 4 and assuming the North line of said Southeast Quarter as
25 bearing N 89° 59' 10" W and all bearings contained herein are
26 relative thereto; thence N 89° 59' 10" W and on the North line of

27 said Southeast Quarter a distance of 660.0 feet; thence S 01° 37' 1 34" W a distance of 84.67 feet to the ACTUAL PLACE OF BEGINNING, 2 said place of beginning being on the South property line of an 3 existing road; thence N 89° 29' 57" W and on the aforesaid South 4 property line a distance of 3369.9 feet to the point of curvature; 5 thence on a 1266.72 foot radius curve to the left forming a central 6 angle of 13° 10' a distance of 291.1 feet to the point of tangency; 7 thence tangent S 77° 20' 03" W a distance of 224.85 feet to the 8 point of curvature; thence on a 753.31 foot radius curve to the 9 right forming a central angle of 12° 40' 30" a distance of 166.65 10 feet to the point of tangency; thence tangent N 89° 59' 27" W a 11 distance of 126.4 feet to the point of curvature; thence on a 12 1673.61 foot radius curve to the right forming a central angle of 13 05° 35' a distance of 163.09 feet to the point of tangency; thence 14 tangent N 84° 24' 27" W a distance of 158.4 feet to the point of 15 curvature; thence on a 1232.18 foot radius curve to the right 16 forming a central angle of 06° 21' 40" a distance of 136.8 feet to 17 the point of intersection of the West line of the Southwest Quarter 18 of said Section 4; thence leaving said curve S 01° 41' W and on the 19 West line of said Southwest Quarter a distance of 501.45 feet to a 20 point on the North property line of the Union Pacific Railroad; 21 thence N 85° 39' 06" E and on the aforesaid North property line a 22 distance of 188.78 feet to the point of curvature; thence on a 23 11017.1 foot radius curve to the left forming a central angle of 24 01° 29' a distance of 285.22 feet to the point of tangency; thence 25 tangent N 84° 10' 06" E a distance of 4185.03 feet to a point, said 26 point being 660.0 feet West of the East line of said Section 4; 27 thence N 01° 37' 34" E a distance of 61.84 feet to the place of 1 beginning. Containing 31.8 acres, more or less, of which 0.4 2 acres, more or less, are presently being used for road purposes on 3 the West side."

4 2. On page 4, line 12, before "revenue" insert "net".

Senator Landis filed the following amendment to LB 28:

FA23

Strike sections 5 & 6

Renumber the remaining sections

MOTION - Print in Journal

Senator Chambers filed the following motion to LB 96:

Indefinitely postpone.

AMENDMENTS - Print in Journal

Senator Thompson filed the following amendment to LB 96:

FA24

Amend AM7005

P. 1, line 9, reinstate the stricken language and strike "up."

Senator Chambers filed the following amendment to LB 96:
FA25

P. 2, strike lines 25-28; and on page 3, strike lines 1-6.

STANDING COMMITTEE REPORTS **Transportation and Telecommunications**

LEGISLATIVE BILL 276. Placed on General File as amended.

Standing Committee amendment to LB 276:

AM0417

- 1 1. On page 3, line 6, strike "three" and insert "four".
- 2 2. On page 5, line 28; page 17, line 19; and page 34,
- 3 line 10, strike "41" and insert "46".
- 4 3. On page 8, strike beginning with "device" in line 1
- 5 through "and" in line 3 and insert "trailer".
- 6 4. On page 9, strike beginning with "All-terrain" in
- 7 line 2 through "2004" in line 3 and insert "Well-boring apparatus,
- 8 backhoes, bulldozers, and front-end loaders"; and in line 27 after
- 9 "37" insert "or 38".
- 10 5. On page 12, line 14, strike "subdivision (b)" and
- 11 insert "subdivisions (b) and (c)"; and after line 27 insert the
- 12 following new subdivision:
- 13 "(c) The department shall issue and file certificates of
- 14 title for state-owned vehicles. Application for a certificate of
- 15 title shall be made upon a form prescribed by the department. All
- 16 applications shall be accompanied by the appropriate fee or fees.".
- 17 6. On page 13, strike lines 23 through 26.
- 18 7. On page 23, line 21, strike "; and" and insert an
- 19 underscored period.
- 20 8. On page 26, line 2, strike "their" and insert "the";
- 21 and in line 3 strike "treasurers" and insert "treasurer".
- 22 9. On page 32, line 8, strike "36" and insert "44".
- 23 10. On page 40, line 16, after "title" insert "issued on
- 24 or after January 1, 2003".
- 1 11. On page 45, line 6, after "title" insert "or
- 2 manufacturer's or importer's certificate".
- 3 12. On page 49, line 4, after the first "the" insert
- 4 "motor"; and in lines 5 and 6 strike "minibike, or all-terrain
- 5 vehicle".
- 6 13. On page 50, line 9, after "issued" insert "for a
- 7 motor vehicle"; in line 17 strike "88" and insert "92"; and in line
- 8 27 after "the" insert "motor".
- 9 14. On page 51, line 10, after the comma insert
- 10 "odometer statements"; and in line 11 after "certificates" insert
- 11 ", statements".
- 12 15. On page 59, lines 6 and 19; and page 60, line 14,

13 strike "59" and insert "64".

14 16. On page 60, line 12, strike "42" and insert "47".

15 17. On page 67, line 12, after "Act" insert an

16 underscored comma.

17 18. On page 77, line 5, strike "subdivision" and show as

18 stricken and strike "(2)(e)" and insert "subsection (6)".

19 19. On page 81, line 1, strike "77" and insert "81".

LEGISLATIVE BILL 639. Placed on General File as amended.

Standing Committee amendment to LB 639:

AM0443

1 1. On page 2, line 24, strike beginning with the first

2 comma through "highways" and insert "and streets"; in lines 26 and

3 27 strike "political or governmental subdivision" and insert

4 "county or municipality"; and in line 28 strike the second "of" and

5 insert "or finding of no significant impact by".

6 2. On page 10, after line 19, insert:

7 "(3) For any beltway proposed under sections 39-1311 to

8 39-1311.05, the duties of the department shall be assumed by the

9 county or municipality that received approval for the beltway

10 project.".

LEGISLATIVE BILL 63. Indefinitely postponed.

LEGISLATIVE BILL 185. Indefinitely postponed.

LEGISLATIVE BILL 202. Indefinitely postponed.

(Signed) Tom Baker, Chairperson

Health and Human Services

LEGISLATIVE BILL 6. Placed on General File.

LEGISLATIVE BILL 306. Placed on General File.

LEGISLATIVE BILL 603. Placed on General File.

LEGISLATIVE RESOLUTION 9. Reported to the Legislature for further consideration.

(Signed) Jim Jensen, Chairperson

General Affairs

LEGISLATIVE BILL 573. Placed on General File as amended.

Standing Committee amendment to LB 573:

AM0091

1 1. Insert the following new section:

2 "Sec. 4. Section 2-1213, Reissue Revised Statutes of

3 Nebraska, is amended to read:

4 2-1213. (1) No racing under sections 2-1201 to 2-1218

5 shall be permitted on Sunday except when approved by a majority of

6 the members of the State Racing Commission upon application for
7 approval by any racetrack. Such approval shall be given after the
8 commission has considered: (a) Whether Sunday racing at the
9 applicant track will tend to promote and encourage agriculture and
10 horse breeding in Nebraska; (b) whether the applicant track
11 operates under a license granted by the commission; (c) whether the
12 applicant track is in compliance with all applicable health,
13 safety, fire, and police rules and regulations or ordinances; (d)
14 whether the denial of Sunday racing at the applicant track would
15 impair such track's economic ability to continue to function under
16 its license; and (e) whether the record of the public hearing held
17 on the issue of Sunday racing at the applicant track shows
18 reasonable public support. Notice of such public hearing shall be
19 given at least ten days prior thereto by publication in a newspaper
20 having general circulation in the county in which the applicant
21 track is operating, and the commission shall conduct a public
22 hearing in such county. The commission may adopt, promulgate, and
23 enforce rules and regulations governing the application and
24 approval for Sunday racing in addition to its powers in section
1 2-1203. If the commission permits racing on Sunday, the voters may
2 prohibit such racing in the manner prescribed in section 2-1213.01.
3 If approval by the commission for Sunday racing at the applicant
4 track is granted, no racing shall occur on Sunday until after 1
5 p.m.

6 No license shall be granted for racing on more than one
7 racetrack in any one county, except that the commission may, in its
8 discretion, grant a license to any county agricultural society to
9 conduct racing during its county fair notwithstanding a license may
10 have been issued for racing on another track in such county. Since
11 the purpose of sections 2-1201 to 2-1218 is to encourage
12 agriculture and horse breeding in Nebraska, every licensee shall
13 hold at least one race on each racing day limited to certified
14 Nebraska-bred horses, or from September 1, 2005, through January 1,
15 2008, for each live racing day, at least one race shall give
16 preference to Nebraska-bred quarter horses. Three percent of the
17 first money of every purse won by a certified Nebraska-bred horse
18 shall be paid to the breeder of such horse.

19 (2) For purposes of this section, Nebraska-bred horse
20 shall mean a horse registered with the Nebraska Thoroughbred or
21 Quarter Horse Registry and meeting the following requirements: (a)
22 It shall have been foaled in Nebraska; (b) its dam shall have been
23 registered, prior to foaling, with the Nebraska Thoroughbred or
24 Quarter Horse Registry; and (c) its dam shall have been
25 continuously in Nebraska for ninety days immediately prior to
26 foaling, except that such ninety-day period may be reduced to
27 thirty days in the case of a mare in foal which is purchased at a
1 nationally recognized thoroughbred or quarter horse blood stock
2 sale, the name and pedigree of the mare being listed in the sale
3 catalog, and which is brought into this state and remains in this

- 4 state for thirty days immediately prior to foaling.
 5 The requirement that a dam shall be continuously in
 6 Nebraska for either ninety days or thirty days, as specified in
 7 subdivision (2)(c) of this section, shall not apply to a dam which
 8 is taken outside of Nebraska to be placed for sale at a nationally
 9 recognized thoroughbred or quarter horse blood stock sale, the name
 10 and pedigree of the mare being listed in the sale catalog, or for
 11 the treatment of an extreme sickness or injury, if written notice
 12 of such proposed sale or treatment is provided to the secretary of
 13 the commission within three days of the date such horse is taken
 14 out of the state.
 15 The commission may designate official registrars for the
 16 purpose of registration and to certify the eligibility of
 17 Nebraska-bred horses. An official registrar shall perform such
 18 duties in accordance with policies and procedures adopted and
 19 promulgated by the commission in the current rules and regulations
 20 of the commission. The commission may authorize the official
 21 registrar to collect specific fees as would reasonably compensate
 22 the registrar for expenses incurred in connection with registration
 23 of Nebraska-bred horses. The amount of such fee or fees shall be
 24 established by the commission and shall not be changed without
 25 commission approval. Fees shall not exceed one hundred dollars per
 26 horse.
 27 Any decision or action taken by the official registrar
 1 shall be subject to review by the commission or may be taken up by
 2 the commission on its own initiative."
 3 2. Renumber the remaining sections accordingly.

(Signed) Ray Janssen, Chairperson

Revenue

LEGISLATIVE BILL 254. Indefinitely postponed.
LEGISLATIVE BILL 514. Indefinitely postponed.
LEGISLATIVE BILL 644. Indefinitely postponed.
LEGISLATIVE BILL 720. Indefinitely postponed.

(Signed) David Landis, Chairperson

GENERAL FILE

LEGISLATIVE BILL 563. Title read. Considered.

Advanced to E & R for review with 26 ayes, 2 nays, 13 present and not voting, and 8 excused and not voting.

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 12A. Introduced by Landis, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 12, Ninety-ninth Legislature, First Session, 2005; and to declare an emergency.

ANNOUNCEMENT

Senator Kremer announced the Agriculture Committee will meet in Room 1524 on February 22, 2005, instead of Room 2102.

STANDING COMMITTEE REPORT
Health and Human Services**LEGISLATIVE BILL 259.** Placed on General File as amended.

Standing Committee amendment to LB 259:

AM0478

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. (1) The Nebraska Coalition for Juvenile
- 4 Justice established in section 43-2411, in consultation with the
- 5 Nebraska Commission on Law Enforcement and Criminal Justice, the
- 6 Department of Health and Human Services, and the Department of
- 7 Health and Human Services Regulation and Licensure, shall create a
- 8 work group to develop recommendations for the training of youth
- 9 services workers employed by entities licensed by the Department of
- 10 Health and Human Services and the Department of Health and Human
- 11 Services Regulation and Licensure for the care or treatment of
- 12 youth in out-of-home placements. The Nebraska Commission on Law
- 13 Enforcement and Criminal Justice shall provide staff support for
- 14 the work group.
- 15 (2) On or before December 1, 2005, the coalition, in
- 16 consultation with the work group, the Nebraska Commission on Law
- 17 Enforcement and Criminal Justice, the Department of Health and
- 18 Human Services, and the Department of Health and Human Services
- 19 Regulation and Licensure, shall prepare and submit to the Governor
- 20 and the Legislature a plan for the statewide provision and funding
- 21 of training for youth services workers. The plan shall include,
- 22 but not be limited to:
- 23 (a) Identification of youth services workers to be
- 24 trained;
- 1 (b) A model training curriculum for youth services
- 2 workers;
- 3 (c) The statewide availability and cost of training;
- 4 (d) A certification process for approved providers of
- 5 training;
- 6 (e) A certification process for youth services workers;
- 7 (f) Adequate funding for training of youth services

8 workers; and
9 (g) Oversight of training providers and competency
10 assessments of youth services workers.
11 (3) This section shall terminate upon submission of the
12 report required in this section or on December 1, 2005, whichever
13 occurs first.
14 Sec. 2. Since an emergency exists, this act takes effect
15 when passed and approved according to law."

LEGISLATIVE BILL 305. Placed on General File as amended.

Standing Committee amendment to LB 305:

AM0374

1 1. Strike the original sections and insert the following
2 new sections:
3 "Section 1. For purposes of sections 1 and 2 of this
4 act:
5 (1) Educational institution means any (a) public or
6 private nursery school, preschool, child care program other than an
7 in-home child care program, or Head Start program, (b) elementary
8 school, middle school, junior high school, or senior high school,
9 and (c) trade school, postsecondary career school, community
10 college, college, or university; and
11 (2) Educational property means any (a) buildings or other
12 real property owned, leased, or controlled by an educational
13 institution or used by an educational institution during any
14 school-related activity and (b) school buses and other vehicles
15 owned, leased, or operated by an educational institution.
16 Sec. 2. (1) Notwithstanding any other provision of law,
17 the use of tobacco products is prohibited on all educational
18 property in this state, except (a) in classrooms or other
19 facilities as part of the educational, medical, or scientific
20 curriculum or research of an educational institution and (b) in the
21 outdoor areas owned, leased, or controlled by a postsecondary
22 educational institution. The governing authority of each
23 educational institution shall prominently post notice of such
24 prohibition to students, staff, and the general public on the
1 educational property of such institution.
2 (2) Nothing in this section shall be construed to
3 prohibit an educational institution from adopting and enforcing a
4 more restrictive policy relating to the use of tobacco products on
5 the educational property of such institution than the provisions of
6 this section.
7 (3) Nothing in this section shall be construed to
8 infringe on an educational institution's authority to define its
9 mission, develop policy, manage resources, or govern such
10 institution.
11 Sec. 3. Section 71-5707, Revised Statutes Supplement,
12 2004, is amended to read:
13 71-5707. (1) No person shall smoke in a public place or

14 at a public meeting except in designated smoking areas. This
15 subsection does not apply in cases in which an entire room or hall
16 is used for a private social function and seating arrangements are
17 under the control of the sponsor of the function and not of the
18 proprietor or person in charge of such room or hall.

19 (2) With respect to factories, warehouses, and similar
20 places of work not usually frequented by the general public, the
21 Department of Health and Human Services Regulation and Licensure
22 shall, in consultation with the Department of Labor, establish
23 rules to restrict or prohibit smoking in those places of work where
24 the close proximity of workers or the inadequacy of ventilation
25 causes smoke pollution detrimental to the health and comfort of
26 nonsmoking employees.

27 (3) No person shall smoke at a site where child care
1 programs required to be licensed under section 71-1911 are
2 provided. This subsection applies to a child care program located
3 in the home of the provider only during times one or more client's
4 children are present in any part of the home.

5 (4) Smoking is prohibited in all vehicles owned or leased
6 by the state and in all buildings, and the area within ten feet of
7 any entrance of such buildings, which are owned, leased, or
8 occupied by the state except as provided in subsections (5); and
9 (6); ~~and (7)~~ of this section.

10 (5) The following buildings or areas within buildings in
11 which persons reside or lodge may be exempt from this section: (a)
12 Nebraska veterans homes established pursuant to section 80-315; (b)
13 private residences; (c) facilities and institutions under the
14 control of the Department of Health and Human Services; and (d)
15 overnight lodging facilities and buildings managed by the Game and
16 Parks Commission, but no more than twenty-five percent of the
17 overnight lodging facilities at each park location shall permit
18 smoking.

19 (6) Designated smoking areas not to exceed fifty percent
20 of the space used by the public may be established in state-owned
21 buildings at the Nebraska State Fairgrounds that possess a Class C,
22 I, or M license for the sale of alcoholic liquor for consumption on
23 the premises under the Nebraska Liquor Control Act.

24 ~~(7) Smoking may be permitted in no more than forty~~
25 ~~percent of the residential housing rooms or units owned or leased~~
26 ~~on each campus under the control of the Board of Regents of the~~
27 ~~University of Nebraska or the Board of Trustees of the Nebraska~~
1 ~~State Colleges.~~

2 Sec. 4. Original section 71-5707, Revised Statutes
3 Supplement, 2004, is repealed.".

(Signed) Jim Jensen, Chairperson

ATTORNEY GENERAL'S OPINIONOpinion 05002

DATE: February 17, 2005

SUBJECT: Constitutionality of Proposed Amendment to Neb. Rev. Stat. § 32-561; Simultaneous Service in the Legislature and in the Military

REQUESTED BY: Pam Redfield, Senator
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested the opinion of this office regarding a proposed amendment to Neb. Rev. Stat. § 32-561 (2004). You propose to amend § 32-561 regarding elective offices, military duty and vacancies of office so as to eliminate the current exception for legislators called to military duty. You have been advised by the Revisor's Office that such legislation may be unconstitutional under art. III, § 9 of the Nebraska Constitution. Therefore, you have requested our opinion of the constitutionality of legislation which would amend § 32-561 as described above.

Neb. Rev. Stat. § 32-561 (1) currently provides as follows:

(1) The acceptance of a commission to any military or naval office or the enlistment in or induction into the military or naval service of the United States which may require an incumbent in an elective office, except the office of member of the Legislature, to exercise military or naval duties within or without the state for any period of time within the term for which such person has been elected or appointed shall not create a vacancy of such office. While the incumbent exercises such military or naval duties within or without this state, he or she shall not be (a) entitled to receive any compensation, perquisites, or emoluments of the elective office, (b) required to keep and maintain an official bond or equivalent commercial insurance policy in force, or (c) responsible for the acts and defalcations of an acting officer duly appointed and qualified to take the place of the incumbent in such office during the time the incumbent is in such military or naval office or is inducted into or enlists in the military or naval service. (Emphasis added).

Pursuant to this statute, no vacancy is created in an elective office when the incumbent exercises military or naval duties. However, members of the Legislature are specifically excepted. The language excepting the office of member of the Legislature was added in 1941 to a predecessor of § 32-561, that is, Neb. Rev. Stat. § 32-1701 (Cum. Supp. 1941).

You have been informed that legislation to remove this exception would

be unconstitutional pursuant to art. III, § 9 of the Nebraska Constitution which provides as follows:

No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to or have a seat in the Legislature. No person elected or appointed to the Legislature shall receive any civil appointment to a state office while holding membership in the Legislature or while the Legislature is in session, and all such appointments shall be void. Except as otherwise provided by law, a member of the Legislature who is elected to any other state or local office prior to the end of his or her term in the Legislature shall resign from the Legislature prior to the commencement of the legislative session during which the term of the state or local office will begin.

In our view, another potential problem is raised by the Separation of Powers provision of art. II, § 1 of the Nebraska Constitution. Art. II, § 1 provides, as is pertinent here: "[T]he powers of the government of this state are divided into three distinct departments, the Legislative, Executive and Judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, . . ." In other words, in its personnel aspect, Article II prohibits certain persons from serving two branches of government concurrently.

We have previously discussed in some detail the permissibility of service in the Nebraska National Guard by a member of the Nebraska Legislature in Op. Att'y Gen. No. 96039 (April 29, 1996). At that time we responded to the question of Senator John Hilgert concerning service in the Nebraska National Guard as a commissioned officer by a member of the legislature and we responded to the question within those parameters. In that opinion we first examined art. III, § 9 which prohibits dual office holding by legislators. "[s]ince the initial sentence of art. III, § 9 does not distinguish between military or civil offices, it appears to us that the prohibitions contained in that portion of the Nebraska Constitution apply equally to military as well as civil offices. Under that analysis, an individual who holds a military office under authority of the United States or a lucrative military office under authority of the State is prohibited from serving in the Legislature." Op. Att'y Gen. No. 96039 at p.3. We then examined the history of the constitutional provision as well as the Nebraska Supreme Court's discussion of it in *State ex rel Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991), which supported our conclusion. We concluded that service as a commissioned officer in either the Nebraska National Guard or under authority of the United States is incompatible with service as a member of the Nebraska Legislature on the basis of art. III, § 9.

In that prior opinion, we concluded that dual service as a commissioned officer in the Nebraska National Guard and a member of the Nebraska Legislature is also prohibited by the Separation of Powers provision of art. II, § 1. Under the test set out in the *Conway* case, *supra*, a member of the

Nebraska Legislature is an officer of the Legislative branch of government and, as a result, cannot be either an officer or an employee of another branch of government. As we believe that commissioned officers in the Nebraska National Guard are officers in the Executive Branch of state government, members of the Legislature cannot also serve as a commissioned officer in the Guard.

As previously stated, our prior opinion was limited to the question of service as a commissioned officer in the Nebraska National Guard. While, art. III, § 9 would likely be interpreted to prohibit a Legislator from serving as a commissioned officer in either the Nebraska National Guard or United States military service, it does not appear to preclude a Legislator from serving as an enlistee in the Nebraska National Guard or United States military service. The remaining question then is whether the Separation of Powers provision at art. II, § 1 would preclude a Legislator from service as an enlistee in either the Nebraska National Guard or United States military service. Art. II, § 1 would preclude a Legislator from being either an officer or an employee of another branch of state government, but would not preclude that Legislator from serving in another branch of federal government. Therefore, in our view, a Legislator would not be prohibited by either constitutional provision from serving as an enlistee in the United States military service. As to whether a Legislator could serve as an enlistee in the Nebraska National Guard, this question may turn upon whether an enlistee in the Nebraska National Guard constitutes a "member" of the Executive Branch of government.

In Conway, supra, the Court interpreted the phrase "being one of these departments," for purposes of the Separation of Powers provision, as meaning "being a member - that is, either an officer or employee - of another branch." Id. at 782, 472 N.W.2d at 412. The Nebraska Supreme Court has not directly indicated what constitutes being an employee of a state agency in a case involving art. II, § 1, and the definition may vary from situation to situation. It is simply not clear whether an enlistee in the Nebraska National Guard would be considered an employee or a member of the Executive branch.

However, Neb. Rev. Stat. § 32-561 (1) of which you inquire, on its face, addresses the vacancy issue only in the case of "enlistment in or induction into the military or naval service of the United States." As section 32-561 (1) arguably does not pertain to whether a vacancy is created when an incumbent enlists in the Nebraska National Guard, we will not at this time consider further whether enlistment in the Guard by a Legislator would violate the Separation of Powers provision.

In conclusion, it is our opinion that an amendment to section 32-561 which would allow Legislators to simultaneously serve as a commissioned officer in either the Armed Services of the United States or the Nebraska National Guard would likely be found unconstitutional under art. III, § 9 and art. II, § 1. Amendment to this statutory provision so as to allow Legislators

to serve simultaneously as enlistees in the armed services of the United States would likely be constitutionally permissible as an enlisted person is probably not an office holder as that term is employed in art. III, § 9, and being a member of the federal Executive Branch does not appear to be precluded by art. II, § 1.

Sincerely,
JON BRUNING
Attorney General
(Signed) Lynn A. Melson
Assistant Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature
09-16-21

UNANIMOUS CONSENT - Add Cointroducers

Senator Johnson asked unanimous consent to have his name added as cointroducer to LB 106. No objections. So ordered.

Senator Preister asked unanimous consent to have his name added as cointroducer to LB 182. No objections. So ordered.

AMENDMENTS - Print in Journal

Senator Chambers filed the following amendment to LB 96:
FA26

Page 2, in line 6 strike and show as stricken "shall be entitled to" and insert "may be granted"; and in line 12 strike and show as stricken "entitlement" and insert "grant".

Senator Chambers filed the following amendment to LB 96:
FA27

Page 3 in line 3 after the comma insert "except that priority shall be given to any guard member who has been called to active duty by the federal government during a war."

Senator Chambers filed the following amendment to LB 28:
FA28

Page 6 in line 25, strike "2007" and insert "2005"

Senator Chambers filed the following amendment to LB 28:
FA29

P. 6 in line 10, strike "2010" and insert "2006".

Senator Chambers filed the following amendment to LB 28:
FA30

Page 2 in lines 7 and 8 strike "an irrevocable contribution" and insert "a self-serving investment designed to achieve the purposes of any other investment"; and in line 9 strike "contribution" and insert "investment".

VISITORS

Visitors to the Chamber were A. B. and Savanna Cox from Mullen; 16 fourth-grade students and teacher from St. John's School, Seward; Duane and Darrin Bergers from Schuyler; and 18 members of Leadership North Platte and former Senator David Bernard-Stevens.

ADJOURNMENT

At 12:01 p.m., on a motion by Senator Wehrbein, the Legislature adjourned until 10:00 a.m., Tuesday, February 22, 2005.

Patrick J. O'Donnell
Clerk of the Legislature